

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CHARLES HILL,)	
)	
Plaintiff,)	No. C00-4620 BZ
)	
v.)	
)	
THE UNITED STATES OF)	ORDER DENYING PLAINTIFF'S
AMERICA, et al.)	REQUEST TO AMEND HIS
)	COMPLAINT
Defendant.)	
_____)	

At the pretrial conference, plaintiff sought to amend his complaint to seek damages in excess of his \$324,000 claim before the Coast Guard. The Federal Tort Claims Act ("FTCA") imposes a statutory cap on any damages sought "in excess of the amount of the claim presented to the federal agency" 28 U.S.C. § 2675(b). In order to qualify for an exception to the statutory cap, plaintiff has the burden of establishing that "the increased amount is based upon newly discovered evidence not reasonably discoverable at the time of presenting the claim to the federal agency, or upon allegation and proof of intervening facts, relating to the amount of the claim."

1 Id. See also Richardson v. U.S., 841 F.2d 993, 999 (9th Cir.
2 1988) (for plaintiff to prevail, "the district court should
3 determine whether the full extent of [his] injuries was
4 reasonably foreseeable" at the time of his administrative
5 claim). In my April 17, 2002 Final Pretrial Order, I took
6 plaintiff's request under submission subject to the evidence
7 presented at trial.

8 After considering all the evidence, I find that plaintiff
9 has not met his burden of showing that when he filed his
10 administrative claim on June 7, 2000, it was not reasonably
11 foreseeable for plaintiff to have claimed damages
12 substantially in excess of his administrative claim along the
13 lines of what he claimed at trial. At the time plaintiff
14 filed his administrative claim, he had been experiencing
15 persistent pain for almost a year and a half. It was clear to
16 plaintiff that his injuries, which Dr. Andrews had suggested
17 would "linger for as long as nine months" from the date of the
18 accident, (Pl.'s Ex. F-7), were not going to heal in the
19 foreseeable future. As early as March, 2000, plaintiff was
20 aware that his symptoms were serious enough that Dr. Jones had
21 suggested spinal surgery. (Id. at Ex. L-5.) According to the
22 evidence, plaintiff's ability to work had also suffered
23 significantly. Of the cases plaintiff testified he referred
24 or declined as a result of the accident, he had referred a
25 majority of them by the time he filed his administrative
26 claim.

27 Plaintiff points to Dr. Mandell's expert report, dated
28 July 1, 2001, which states that plaintiff's 25% work

1 limitation was permanent, as proof of "newly discovered
2 evidence" and "intervening facts" not reasonably foreseeable
3 at the time of filing his administrative complaint. However,
4 nothing in the record suggests that Dr. Mandell would not have
5 come to the same conclusion had he examined plaintiff in June,
6 2000. In fact, plaintiff testified that he had heard from
7 other doctors that his symptoms might be permanent prior to
8 Dr. Mandell's July 1, 2001 report. Finally, even if the court
9 were to accept that plaintiff first discovered the permanent
10 degree of his disability on July 1, 2001, plaintiff has
11 provided no explanation as to why he did not seek to amend his
12 complaint at that time.

13 Fraysier v. U.S., 766 F.2d 478 (11th Cir. 1985), upon
14 which plaintiff relies, is readily distinguishable. In
15 Fraysier, a case in which the facts are "not susceptible to a
16 broad approach," id. at 479, the plaintiff was granted damages
17 at trial in excess of those claimed before the administrative
18 agency. When Fraysier filed his claim with the administrative
19 agency, he was under the mistaken impression that he was
20 suffering from a bacterial infection that was easily cured.
21 In reality, his doctors had failed to diagnose him with
22 Guillain-Barre Syndrome, a subtle and complex injury with a
23 high potential for permanent consequences. Id. at 480.
24 Fraysier's discovery of this condition after the filing of his
25 administrative claim constituted "newly discovered evidence"
26 because he was not even aware of the true nature of his
27 symptoms. In contrast, not only was Mr. Hill aware of the
28 true nature of his injury, he was aware of its severity as

1 well.

2 Therefore, **IT IS HEREBY ORDERED** that plaintiff's request
3 to amend his complaint to exceed damages in the amount of
4 \$324,000 is **DENIED**.

5 Dated: April 26, 2002

6
7
8

Bernard Zimmerman
9 United States Magistrate Judge

10
11 N:\post\Amend.ord
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28